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Attorneys for Defendants Maxim Healthcare Services,  
Inc., Maxim Health Systems, LLC and Mark Testori

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ALICE A. WHEELER, FIDUCIARY  
SUPPORT SERVICES, INC., PERSONAL  
REPRESENTATIVE OF THE ESTATE OF  
HOLLY JEAN CASEY,

Plaintiff,

v.

MULTNOMAH COUNTY, MAXIM  
HEALTHCARE SERVICES, INC., MAXIM  
HEALTH SYSTEMS, LLC, GLENDA J.  
BAXTER, MARK TESTORI, REBECCA  
WATTS JACOBS, CHRISTINE OLSON,  
SUSAN MILHOLLAND, JEFFREY CHUN,  
JACK DIAMOND, JOSHUA POMEROY,  
WENDY MUTH, TIMOTHY  
STROHMEYER and JOHN AND JANE  
DOES 1-4.,

Defendants.

Civil No.: 3:09-CV-1518-AC

**ANSWER AND AFFIRMATIVE  
DEFENSES**

Defendants Maxim Healthcare Services, Inc., Maxim Health Systems, LLC and Mark

Testori for their Answer to Plaintiff's Complaint, admit, deny and allege as follows:

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**ANSWER AND AFFIRMATIVE DEFENSES**

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## **I. ANSWER**

1. Defendants admit that Maxim Healthcare Services, Inc. (Maxim) is a foreign corporation doing business in Oregon and is in the business of providing medical staffing, which includes providing correctional facility nursing services.

2. Defendants admit that Maxim, pursuant to a contract with Multnomah County, provided nursing services for inmates in the Multnomah County Detention Center (MCDC) on January 3, 2008 (the relevant time period). Maxim assigned nurse Mark Testori to the MCDC during his employment with Maxim.

3. Defendants admit that Mark Testori was working as a registered nurse at the MCDC on January 3, 2008.

4. Defendants admit that Plaintiff's decedent was detained in the MCDC from January 3, 2008 through January 4, 2008.

5. Defendants admit that Mark Testori had a brief interaction with Plaintiff's decedent at the MCDC on January 3, 2008.

6. Defendants admit that Plaintiff's decedent died while detained at the MCDC on January 4, 2008.

7. Except as expressly admitted, Defendants deny each and every allegation of Plaintiff's complaint.

## **II. AFFIRMATIVE DEFENSES**

Having answered Plaintiff's Complaint, Maxim and Mark Testori assert the following affirmative defenses. By asserting these defenses, Maxim and Mark Testori do not intend to assume a burden not imposed by law.

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In regard to the following affirmative defenses, Defendants Maxim and Mark Testori reallege and incorporate by reference their answers and responses as set forth in the paragraphs above.

### **FIRST AFFIRMATIVE DEFENSE**

#### **(Failure to State a Claim)**

8. Plaintiff fails to state a claim under the Eighth Amendment against Maxim and Mark Testori upon which relief can be granted.

9. Plaintiff fails to state a 42 U.S.C. § 1983 claim against Maxim and Mark Testori upon which relief can be granted.

10. Plaintiff fails to state 42 U.S.C. §§ 1985(3) and 1986 claims against Maxim and Mark Testori upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **(Tort Claims Act)**

11. Plaintiff's state law claims are subject to the conditions, limitations, and immunities contained in Oregon's Tort Claims Act, ORS 30.260, *et. seq.*, including, but not limited to, tort claim notice and damage limitations.

### **THIRD AFFIRMATIVE DEFENSE**

#### **(Proper Parties)**

12. In regard to Plaintiff's state law claims, Defendants Maxim and Mark Testori are not proper parties (ORS 30.265(1)).

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**FOURTH AFFIRMATIVE DEFENSE**

**(Notice of Claim)**

13. In regard to Plaintiff's state law claims, Plaintiff failed to provide timely notice to Maxim and Mark Testori of tort claims under ORS 30.275(2).

**FIFTH AFFIRMATIVE DEFENSE**

**(Qualified immunity)**

14. In regard to Plaintiff's federal law claims, Maxim and Mark Testori are entitled to qualified immunity.

**DEMAND FOR JURY TRIAL**

15. Maxim and Mark Testori hereby demand trial by jury on all claims and issues.

WHEREFORE, having fully answered Plaintiff's Complaint herein, Defendants pray that Plaintiff's Complaint be dismissed, that they take nothing hereby, and that Defendants be awarded their costs and disbursements incurred herein.

DATED: March 4, 2010.

BULLIVANT HOUSER BAILEY PC

By           /s/ Evelyn P. English          

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